

### **Remarks/Arguments**

Reconsideration of this application is requested.

#### **Claim Status**

Claims 1, 2, 5-7 and 10 are pending. Since no claims are added, amended or canceled, no listing of claims is required under 37 CFR 1.121.

#### **Claim Rejections – 35 USC 103**

Claims 1, 2, 5-7 and 10 are rejected under 35 USC 103(a) as obvious over Tamura (US 6,040,860) in view of Kanzaki (US 6,137,531). In response, applicant traverses the rejections.

As discussed in applicant's previous amendment, independent claims 1 and 6 as amended recite that:

...at least one of said first and second thresholds is set based on an average level of said physical quantity of said image data.

With respect to this limitation, the Action acknowledges at page 4 that Tamura does not disclose setting at least one of the first and second thresholds based on an average level of the physical quantity of the image data, but asserts that this deficiency is remedied by Kanzaki. In Kanzaki, an automatic threshold value section 12 calculates an average value of luminance of picture elements constituting background image data for a chosen image section (col. 8, lines 12-14). Depending on the calculated average value of luminance, automatic threshold values section 12 sets a threshold value (col. 8, lines 18-21). Then, for each picture element of the chosen image section, mask/background/difference section 13 compares the threshold value with an absolute value of a calculated difference in luminance between the picture element of the chosen image section and a corresponding picture element constituting background image data for that image section (col. 8, lines 26-33).

Thus, in Kanzaki, the threshold value is used to evaluate a luminance value of a selected image. However, the object of Kanzaki's technique is to detect, for example, traveling states of vehicles on a road or fallen objects on a road (col. 1, lines 5-12). In Kanzaki, the average luminance value of a background image is used as a threshold value in order to evaluate a luminance value of each pixel in an image (real space). Therefore, unlike the invention recited in applicant's claims 1 and 6, Kanzaki's threshold value is not used in detecting a peak in a spectrum of luminance values (predetermined physical quantity).

In sum, while applicant and Kanzaki both use a threshold value, it is used for completely different purposes. Kanzaki uses its threshold value (average luminance value) to evaluate a luminance value of each pixel in an image, while applicant's threshold value of claims 1 and 6 is used to detect a peak in a spectrum of predetermined physical quantity (e.g., luminance). Tamura's use of threshold values differs from Kanzaki in the same manner. Thus, applicant's invention as recited in claims 1 and 6 is not obvious over Tamura in view of Kanzaki's completely different method of setting and using threshold values.

For these reasons, claims 1 and 6, and claims 2, 5, 7 and 10 dependent thereon, are not obvious over Tamura in view of Kanzaki, and the rejections of claims 1, 2, 5-7 and 10 under 35 USC 103(a) should be withdrawn.

### **Conclusion**

This application is believed to be in condition for allowance. The Examiner is invited to contact the undersigned to resolve any issues that remain after consideration of this reply.

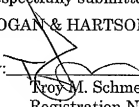
Appl. No. 10/823,898  
Reply dated July 8, 2008  
Reply to Office Action of April 8, 2008

Atty. Ref. 81784.0306  
Customer No. 26021

Any fees due with this reply may be charged to our Deposit Account No. 50-1314.

Respectfully submitted,  
HOGAN & HARTSON L.L.P.

Date: July 8, 2008

By:   
Troy M. Schmelzer  
Registration No. 36,667  
Attorney for Applicant(s)

1999 Avenue of the Stars, Suite 1400  
Los Angeles, California 90067  
Phone: 310-785-4600  
Fax: 310-785-4601